IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4504 of 2006
With
CIVIL APPLICATION No. 13128 of 2006
In
FIRST APPEAL No. 4504 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO. LTD. - Appellant(s)
Versus
RAMSINH ABHESINH RATHOD & 2 - Defendant(s)

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Appearance :
MR SANDIP C SHAH for Appellant(s) : 1,
None for Defendant(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 20/11/2006
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal under section 173 of the Motor Vehicles Act, 1988 is filed by the New India Assurance Company Limited to challenge the judgment and award dated 28th March 2006 of the Motor Accident Claims Tribunal (Aux.), Panchmahals at Godhra in MACP No.1791 of 1999 awarding compensation of Rs.3,80,000/- with proportionate costs and interest at the rate of 9 per cent per annum from the date of claim petition (17.9.99) upto 31.12.2000 and thereafter at the rate of 7.5 per cent per annum till realization.

2. The compensation amount is awarded to mother of deceased Marutisinh Ramsinh who was aged 25 years on the date of the accident and who was the only son of the claimants. The claim petition was filed by the parents, but during pendency of the claim petition, father of the deceased also expired leaving only mother of the deceased as the sole family member.

3. On 30th April 1999, the deceased was working as a labourer in a tractor insured by the appellant Insurance Company. When the tractor was travelling from Dolatpur to Malekpur, on account of the rash and negligent driving of the tractor, the vehicle turned turtle and the deceased was crushed under the said vehicle. The driver and other labourers ran away from the scene of the accident. A police complaint also came to be filed against the driver at Lunavada police station.

4. 46 years old father and 42 year old mother of

the deceased filed the claim petition for compensation of Rs.4,10,000/-. The Tribunal held that the accident was caused by the sole negligence of the tractor driver. Assessing the income of the deceased at Rs.2,000/- per month on the date of accident and Rs.3,000/- per month as the prospective income, the Tribunal deducted one-third amount which the deceased would have spent on himself and assessed the dependency benefit at Rs.2,000/- per month i.e. Rs.24,000/- per annum. Applying the multiplier of 15, compensation for loss of dependency benefit was computed at Rs.3,60,000/- and awarding Rs.15,000/- as the conventional amount for loss to the estate and Rs.5,000 for funeral expenses, the Tribunal made total award of Rs.3,80,000/- with proportionate costs and interest at the rate of 9 per cent till December 2000 and thereafter at the rate of 7.5 per cent per annum.

5. Mr.Sandip Shah, learned counsel for the appellant Insurance Company, submits that since the deceased was 25 years old young man and was not married till the date of the accident, the Tribunal ought to have deducted two-third amount from the income of the deceased as the amount which the deceased would have spent on himself and his family after getting married and therefore the dependency benefit ought to have been assessed only at Rs.1,000/- per month i.e. Rs.12,000/- per annum and applying the multiplier of 15, compensation for loss of dependency benefit was required to be worked out to only Rs.1,80,000/- as against Rs.3,60,000/- awarded by the

Tribunal. Strong reliance has been placed on the decision of the Apex Court in Donat Louis Machado v. L. Ravindra, 1999 ACJ 1400 in support of the submission that when the claimants are parents of an unmarried young man, only one-third part of the income of the deceased should be taken as the dependency benefit available to the parents as the deceased would have spent two-third on himself and his own family which he would have raised on getting married.

6. We have carefully considered the submissions made by the learned counsel for the appellant Insurance Company and have also carefully gone through the judgment of the Apex Court heavily relied upon by the appellant Insurance Company.

7. In the facts of the present case, the deceased was the only child of the parents who had filed the claim petition. Since father of the deceased died during the pendency of the claim petition, mother of the deceased is the only surviving member of the family. She was aged 42 years on the date of accident and about 49 years on the date of the award. Considering the longevity these days, she will have no financial support for the remaining about 30 years of her life. Therefore, the dependency benefit of Rs.2,000/- per month arrived at by the Tribunal cannot be said to be on the higher side. The Tribunal has adopted multiplier of 15 and computed the compensation amount for loss of dependency benefit at Rs.3,60,000/-. Even considering the

present rate of interest, widowed mother of the deceased would hardly get Rs.2,300/- per month as interest on the compensation amount. Considering the rate of inflation, widowed mother of the deceased would not continue to get the same dependency benefit for the remaining 30 years of her life. She would, therefore, have to consume a part of the capital after a very short period and the capital would start diminishing every year. Having regard to these facts, which could not be disputed by the learned counsel for the appellant Insurance Company, we are of the view that the award made by the Tribunal is very much within the brackets.

8. As regards the decision in Donat Louis Machado (supra), in that case, the deceased, aged 31 years, was a journalist earning Rs.2500/- per month. The claim petition was filed by his parents and sister. The Tribunal awarded only Rs.52,800/- which was enhanced by the High Court to Rs.1,27,000/-. The Apex Court raised the figure to Rs.2 lacs in the following manner:

The Apex Court assessed the future income of the deceased at Rs.7500/- at the end of his career and taking the average of income at Rs.3750/- per month and applying the multiplier of 15, worked out the loss of earnings at Rs.6,75,000/-. Thereafter, the Apex Court observed: "but taking a conservative figure of Rs.6,00,000 it can be easily be visualised that the claimants who are the parents and unmarried

sister and who are dependent on him would have got at least 1/3rd amount as he would have spent the rest of 2/3rd amount of his earnings on his own family which he would have raised and on himself. This would come to a figure of Rs.2,00,000."

[emphasis supplied]

9. In the first place, as per the settled legal position, a decision is an authority for what it decides and not what can logically be deduced therefrom. It is equally well settled that a little difference in facts or additional facts may lead to a different conclusion [vide Union of India vs. Chajju Ram, (2003) 5 SCC 568].

In Chhaju Ram's case (supra), the Apex Court relied on the following observations of Lord Denning:-

> "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the court of one case against the colour of another. To decide, therefor, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

Though the judgment in Donat Louis Machado (supra) does state that the claim petition was filed by the parents and unmarried sister of the deceased who were dependent on him, it is not clear as to what was the occupation of father of the deceased and

whether he was getting any pensionary benefits, in case he had retired. It is also obvious that the unmarried sister would have ceased to be dependent on the deceased after her marriage. What the Apex Court has observed in the above quoted observations is that it could be easily visualised that the claimants, who are dependent on the deceased, would have got at least one-third amount. Hence in the facts and circumstances of the case, the Apex Court had considered one-third amount as the minimum amount which the deceased would have spent on parents and unmarried sister of the deceased.

10. In **Municipal Corporation of Greater Bombay vs. Laxman Iyer, (2003) 8 SCC 731,** the Apex Court held that while awarding compensation for loss of dependency benefit and particularly for determining the amount to be deducted for personal expenses of the deceased and also for applying the multiplier, several factors need to taken note of. The Court held that when the deceased was unmarried, the contribution to the parents who had their separate earnings being employed and educated has relevance. The possibility of reduction in contribution once a person gets married is a reality. The compensation is relatable to the loss of contribution or the pecuniary benefits.

In **Fakeerappa vs. Karnataka Cement Pipe Factory, (2004) 2 SCC 473,** the Apex Court held that what would be be percentage of deduction for personal expenditure cannot be governed by any rigid formula

of universal application. It would depend upon circumstances of each case. In that case, the claimants were parents of an unmarried young man, aged 27 years. The deceased was getting Rs.2,000/- per month. The Tribunal and the High Court deducted 50% of the income for personal expenses and assessed the dependency benefit at Rs.1,000/- per month i.e. Rs.12,000/- per annum. Adopting the multiplier of 18 years, a total sum of Rs.2,00,000/- with interest was awarded as compensation. In the appeal before the Apex Court, the claimants challenged the deduction of half of the monthly income for personal expenditure of the deceased. Taking into account special features of the case, the Apex Court felt that it would be appropriate to restrict the deduction for personal expenses to one-third of the monthly income.

11. In the facts of the present case, widowed mother had only the deceased son to turn to for maintenance and for economic, social and emotional support. Hence even after getting married, the deceased would have certainly looked after his mother as much as he would have looked after his wife and children. Considering the Indian cultural ethos, it would not be unreasonable to expect that the deceased would have maintained his widowed mother and provided her with all the necessities of life including medical treatment. The deceased was aged only 25 years on the date of the accident. Nothing would have prevented the deceased from working even harder for more than

Rs.3,000/- per month which is a very conservative estimate made by the Tribunal for prospective income of the deceased. The deceased would have, therefore, certainly spent at least Rs.2,000/- to Rs.3,000/- per month on his widowed mother.

12. In the facts and circumstances of the present case, particularly the fact that the deceased was the only son of the parents and after the father of the deceased also expired during pendency of the claim petition leaving only the mother of the deceased as the sole surviving family member, we do not find any infirmity in the judgment of the Tribunal awarding compensation of Rs.3,60,000 for loss of dependency benefit and making the total award of Rs.3,80,000/-.

13. In view of the above discussion, the appeal is summarily dismissed.

14. Since the appeal is dismissed, Civil Application for stay is also dismissed.

15. The amount deposited before this Court at the time of filing the appeal shall be transmitted to the Tribunal at the earliest.

(M. S. SHAH, J.)

(AKIL KURESHI, J.)

(vjn)